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To: NEPA Comments <ceq_nepa@fs.fed.us>
cc:
Subject: Oregon Cattlemen's Comments

Attached in a pdf file are comments from the Oregon Cattlemen's Association and Union County Cattlemen.

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OR Cattlemen's NEPA comments.pdf

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Oregon Cattlemen's Association
The Voice of the Oregon Cattle Industry
September 21, 2002

NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

Oregon Cattlemen's Association and Union County Cattlemen are submitting the following comments regarding the National Environmental Policy Act federal register request.

Our comments on specific questions are provided below. The Federal Register question has been provided in bold and our response follows.

A. Technology, Information Management, and Information Security

A-1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form. Examples include but are not limited to species or wetlands inventories, air quality data, field surveys, predictive models, and trend analyses.

Livestock producers with federal grazing permits are subject to NEPA processes and therefore desire to be involved in the NEPA process. Oregon Cattlemen's Association in many instances study federal documents and provide comments to agencies during the planning process when a federal action occurs. Comments are also provided as part of the land use planning process. The type of information collected by members varies from producer to producer, and may include differences such as geographic area, size and complexity of operation, type of livestock, USFS or BLM permit, riparian vs. non-riparian, seasonal vs. year long usage and other information relevant to the action.

Permittees in Oregon participate in USFS and BLM monitoring in order to preserve their ability to renew grazing permits. Oregon Cattlemen producers also track hydrological resources such as instream flows, groundwater depths, water temperature and water nutrients from runoff. Many producers maintain ranch management software programs for their ranching operations, and we are always open to sharing our information with the appropriate agency for incorporation into the land use planning process, but guard our private intellectual property and expect agency consideration for our privacy.

Oregon Cattlemen conduct library and scientific journal searches for information on various topics. We stay in constant contact with our state Univeristy Extension Program for the most recent updated management practices and techniques. We rely on a network of scientists across the Pacific Northwest for guidance in seeking information about scientific facts and our members participate in research projects whenever they can.

We rely on statistical evaluations and data interpretations by personnel at the Univeristy as well as our own members who are trained in science and math processes. Due to our educational programs and efforts to work with experts we have a knowledgable membership who actively pursue new ideas and are cautious about untested theories. We have become very reluctant to rely on any government reports or documents for accurate assessments of public resources. We have more to say on this under A-2.

A-2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?

We agrees with National Cattlemen's Association that some factors should be considered in assessing and validating the quality of information, such as: history of use, type of use (such as grazing), duration of use, the origin of the information (agency vs. permittee), geographical area, and baseline data.

In today's litigious environmental context, the true test in assessing and validating the quality of information is whether the information will withstand a court challenge. In the West where environmentalists and opponents of grazing challenge nearly every agency decision concerning NEPA processes, the information and decision of the agency must withstand the challenge. Therefore, it is important that the technical information be precise, accurate and reliable.Oregon Cattlemen have found in the past that the quality of the agency database is often a factor that causes decisions to go against the agencies. Quantity should not be favored over quality and the quality can only be established through good data analysis that is properly examined using statistical methods.

Perhaps the best guidance for determining the validity of information can be found from the court system. The Supreme Court in Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), suggested five criteria for determining scientific validity, and hence reliability, including 1) whether the information is derived by the scientific method, 2) whether the information has been subjected to peer review or publication, 3) whether the relevant scientific community "generally accepts" the information, 4) consideration of the actual or potential rate of error of the scientific technique, and 5) whether standards for controlling the technique's operation exist. Id. At 593-95. By establishing these five criteria as the parameters for assessing and validating the quality of information, agencies will undoubtedly withstand most legal challenges.

This item is of particular concern to Oregon Cattlemen's Association. **Many federal laws require documentation that is supported by science which means articles that meet criteria for " best available science" should dominate the discussions. Agencies rely on their own work and their own reports. No one knows what they mean by "science".**

Government publications are not science literature and generally fall in the categories of "opinion and observations". The documents do not include data and data analysis, nor are the assumptions and conclusions provided in the narratives appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

During professional scientific journal reviews, reference lists are often scrutinized to ensure the authors have provided adequate appeals for authority that support the foundation of an experimental effort. **The government process does not have an objective mechanism in place to cause the authors to edit or change errors in statements which may not accurately reflect the results of cited literature used for support.** The process fails to prevent production of "laundry lists" and does not inspire well critiqued science literature.

We would find it useful if in the NEPA process, science received some kind of definition. Below is the definition Oregon Cattlemen have adopted as policy and included are 6 criteria modeled from the Washington state law which is an excellent guideline to selecting "best available science".

The Steps Required for Publication as "Best" Science

In general, to meet the rigors of a science journal review, the following criteria have been met for publication:

1. Peer review. The information has been critically reviewed by other persons who are qualified scientific experts in that scientific discipline. The criticism of the peer reviewers has been addressed by the proponents of the information. Publication in a refereed scientific journal usually indicates that the information has been appropriately peer-reviewed.

2. Methods. The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.

3. Logical conclusions and reasonable inferences. The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.

4. Quantitative analysis. The data have been analyzed using appropriate statistical or quantitative methods. The use of descriptive statistics alone (presentation of means, ranges, whisker box graphs, etc.) do not meet this requirement.

5. Context. The information is placed in proper context and limitations are noted. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.

6. References. The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other pertinent existing information.

Most professional journals require a "blind" national review before articles are approved for printing. A "blind" national review is an attempt to provide an objective assessment of the quality of the work as well as the writing and analysis of the study. Authors are not in contact with the peers who are conducting the review and usually do not know who is providing edits and comments about their work.

The criteria above can be found in the State of Washington's Administrative Code as guidance to determine "what is best available information"?

A-4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?

To manage and retrieve data a spreadsheet program coupled with a statistical package is quite adequate for our needs. Statsgraph Plus is a good choice and know some who use and like Statistix. Microsoft Excel is good for some work as is Quatro Pro. The key is to have people who know and understand the proper use of statistical testing and are familiar with spreadsheet designs.

A-3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.

Oregon Cattlemen have an extensive database of water quality information collected throughout Oregon and Washington. We use Oregon and Washington protocols for water quality sampling but use the Standard Scientific Methods for the data collection. We started the database 7 years ago and have found that the sampling design is the most important step in maintaining a database.

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In general samples meet the following criteria : random, representative of the population, sufficiently large, controlled for extraneous variables.

Random sampling is intended to avoid bias in the selection of plots on the ground. Such plots may not always fall in a convenient area close to a road or trail. A representative sample of the population refers to the subject being sampled. If tall and short grass species are present in an area, then the plots sampled should each have tall and short grass present. Enough samples then must be taken to reach an adequate sample size to account for the variability in the plant community. Variability on a site may be due to a soil change, plant community variation, moisture difference within a site, climatic changes from season to season or year to year, etc.

1. **Sampling must be carried out in a rigorous manner.**
2. **The study should be free from errors except for the variations that are due to the limitations of the equipment being used.**
3. **Bias should be avoided.**
4. **Experimental design and equipment should not be changed in the middle of an experiment.**
5. **Unusual values, outliers, should be checked to see whether or not it is due to a sampling error.**
6. **Good notes should be taken and kept until the study is completed. Summaries of the data are not sufficient for statistical analysis.**
7. **Conclusions should only be made after proper analysis is completed.**

The following articles and books discuss ecological field experimental designs and treatment affects.

R..A. Fisher and J. Wishart. 1930. The arrangement of field experiments and the statistical reduction of the results. Imperial Bureau of Soil Science (London), Technical Communication Number 10:1-23.

"No one would now dream of testing the response to a treatment by comparing two plots, one treated and the other untreated".

Snedecor, G.W. and William Cochran. 1967. Statistical methods. Iowa State University Press. Ames, IA.

This text is a standard reference for researchers in designing and analyzing data collected on projects. The theories of math are used to provide an objective result in determining when numbers are different due to patterns occurring within a population that are not due to chance.

Hurlbert, Stuart H. 1984. Pseudoreplication and the design of ecological field experiments. Ecological Monographs. Ecological Society of America. 54(2).

There are five components to an experiment: hypothesis experimental design, experimental execution, statistical analysis and interpretation. Clearly the hypothesis is of primary importance, for if it is not, by some criterion, "good," even a well-conducted experiment will be of little value.

It is clear that experimental design and experimental execution bear equal responsibility for the validity an sensitivity of an experiment. In a practical sense execution is more critical than design. Errors in execution can and usually do intrude

at more than one point in an experiment, come in greater numbers of forms, and are often subtler than design errors. The effects of undetected or undetectable errors make experimental execution critical. Statistical analysis and interpretation are the least critical aspects of experimentation, in that if purely statistical or interpretive errors are made, the data can be reanalyzed. On the other hand, the only complete remedy for design or execution errors is repetition of the experiment.

A-5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD-ROM, web-site, public meeting, radio, television)? Explain the basis for your preferences.

Email, web-site, public meeting, radio, and television. We send information concerning proposed actions and NEPA analyses to our members through electronic means (e-mail) or through our Beef Producer magazine. Also, we hold meetings throughout the year and during those meetings discuss proposed actions if necessary. Monitoring the Federal Register (FR) is difficult to keep up with the many issues we have to consider. We tend to favor electronic means as it reduces paperwork and cost for FR notice whenever possible. We appreciate any notices that the agencies can forward to our state office in Salem. The Ag organizations in Oregon work together to keep each other informed, and benefit when there is an email list that provides notification of actions.

We have many members in rural areas who do not have computers and email. Radio and newspaper announcements are still preferred by most. Public meetings are very helpful, but due to the long distances that people have to travel.....more need to be held at locations other than the major cities.

A-6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?

The only real objection or concern about our use of tools is that some members do not have access to own personal computers or other electronic date communication devices. Submitting comments via a web site or email address has been a plus for the agencies. Providing information at web sites is helpful also. We do our part to get the information out, but it would be an added benefit if radio and newspaper announcement about the document availability would continue and increase as much as possible.

A-7. What factors should be considered in balancing public involvement and information security?

We suggest you take note of the NCBA comments (Scott Klundt, Esq.) that agencies must be very careful when dealing with information obtained from private citizens. Several legal safeguards exist to protect the privacy of citizens. For instance, the Privacy Act, 5 U.S.C 552a, and the Freedom of Information Act (FOIA), 5 U.S.C., are two statutes designed to protect private citizens' personal lives. Agency regulations governing the release of private information also exist such as 7 C.F.R. §1.11, the United States Department of Agriculture's rules on private information. Citizens certainly have the right to know what their government is up to but that right is not absolute. One applicable Exemption to FOIA bars the release of trade secrets, commercial and financial information. 5 U.S.C 552(b)(4). Another Exemption bars the disclosure of any personal

identifying information the release of which would result in a unwarranted invasion of privacy. 5 U.S.C. 552(b)(6).

Designating specific factors for the purpose of balancing public involvement and information are difficult to enumerate on such a broad scale. Much depends on the nature of the agency action, the extent of information gathered by the agency, and for what purpose the agency is collecting the information and whether the information obtained is for the purpose of receiving technical or financial assistance. In order to properly balance public involvement and information security, we suggest all agencies follow the measures originally outlined in Executive Order 12600 and then issued by USDA under 7 C.F.R. 1.12. Exec. Order No. 12,600, 52 Fed. Reg. 23781 (1987).

Oregon Cattlemen's Association also adds that some common sense and respect for private property and private intellectual property will go a long ways, but following established law and protections when handling information will help to insure a reasonable balance between public involvement and information security. We suggest that training and information sessions be made mandatory for federal employees at the onset of employment.

B. Federal and Intergovernmental Collaboration

One goal of NEPA is to obtain public involvement. We suggest that "cooperating agency status" be granted to local governments such as county commissions. There is a great deal of interest in having more local say in the process and we encourage development of this idea.

B-1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles. Such examples may include, but are not limited to, differences in agencies' policies, funding limitations, and public perceptions.

Cooperating agency processes are beneficial to the public if the agency are honest and do not arrive with an agenda. Agencies are sometimes at odds over issues and the process breaks down due to conflicts. An example in the Pacific Northwest are USFS and NMFS consultations. We have found decisions being made by the cooperative effort based on their political clout and not on either agencies data or science. What they call cooperation appears to most to be mere "duty" and employees with agendas at the local levels "swing" the deal they believe in rather than making a fair and honest assessment of the issue.

The working group efforts should be from a unanimous front in order to ensure that any position has been fully debated. As long as the working group, cooperating agencies and the federal agency participate in partnership, openness and honesty, few surprise decisions and their ramifications will occur. If the public is to be involved then their input must be considered as seriously as the agency personnel's opinions. More effort must be given at the beginning to study the science and literature using a criteria in order to rely on the best of the best science.

Inclusion of the County government would provide a way for local input at the beginning of an action rather than at the end. Local history and local understanding of resources is one of the most valuable assets this country has and the NEPA process should take advantage of it.

B-2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?

Most of the barriers or challenges precluding or hindering collaborative agreements exist within the agency. Often, a federal employee is the root of the problem and may be the result of an unwillingness to share information, contrasting ideological philosophies, or complete disdain for the activity or use for which the agency is proposing. Other hindrances could also include a lack of communication and direction within the agency, the enormity of the project, agency personnel lacking the proper qualifications, expertise or experience to manage the project, or lack of funding.

B-3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Agencies should understand the community's relationship with the natural resources on public lands and should seek early input for a better understanding on their part. This will lead to a better working relationship between the federal agency and the local cooperating agency.

C. Programmatic Analysis and Tiering

C-1. What types of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of the analyses, and the efficiencies realized by the analysis or in subsequent tiers.

Oregon Cattlemen's Association agree with NCBA's comments on this question.
A good issue lending itself to a programmatic review is the current Administration's wildfire management plan and the role of livestock grazing in the control of fire fuel loads. Under the current plan, the Secretaries of Agriculture and the Interior, along with the Western Governors Association and others worked together to develop a strategy for reducing the threat of wildfires. As a result of their collective and noble effort they developed a 10 year strategy for controlling wildfires. Included in the plan is a provision to "Incorporate sustainable livestock grazing practices as part of protection and restoration strategies, where appropriate." *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Comprehensive Strategy Implementation Plan*, 15, May 21, 2002. Using livestock grazing to control fuel loads is an outstanding idea, livestock are mobile, consume a wide variety of forage, leave little trace and are highly effective in reducing fuel loads. However, implementing such an idea will be problematic, not in terms of logistics but in philosophy. Many environmental groups oppose *any* livestock grazing and will go to great lengths to completely eradicate grazing. Therefore, a programmatic review of livestock grazing on a broad scale will be more efficient than to conduct site specific environmental reviews. Grazing to control fuel loads will be short-term, intense, and geographically limited. Agencies such as the BLM and USFS should only be required to produce programmatic documents to further fuel load control by utilizing livestock grazing. The environmental impacts will be minimal and in all likelihood highly similar across the western landscape where the greatest threat of wildfires occur. A programmatic review of livestock grazing for controlling fuel loads is the most efficient method.

Further, Oregon Cattlemen suggest a programmatic review of the Interior Columbia Basin Environmental Management Plan. The plan encompasses vast acres of federal land and is detrimental to man aspects of management on public lands across the states it covered. The document was severely flawed by insertion of subjective interpretations of limited data and became a process for scientific "pontification" rather than science application. Our view of the document is that it attempted to micro manage our public and private lands, while standing on the moon. It is so far from reality it has become more a hinder than a help.

We also suggest a programmatic review of the federal policy for noxious weeds or the lack of a noxious weed control plan. The state expertise on the topic of noxious weed control is vast and in the Pacific Northwest, the BLM lost the Snake River canyon to "yellow starthistle" due to the failure of the agency to apply proper controls and management strategies early in the process. We are unsure if the area can be recovered and it is a blight on the landscape as well as a threat to the private lands in Oregon and Washington.

D. Adaptive Management/Monitoring and Evaluation Plans

Scientific methods must again become a part of the agency knowledge and practice. Instead of shoe boxes of data, they should structure monitoring in such a way as to be able to attain an objective interpretation and move away from the "opinion" or experience of the employees. Measure resources before projects begin, measure during and after projects, and when the time arises to determine what is working and what isn't.....an objective evaluation will be available. Seek expertise at the Universities for data collection designs and learn about the practices known to be sound and feasible for local areas.

D-1. What factors are considered when deciding to use an adaptive management approach?

Adaptive Management systems are complementary to all natural resource actions. Monitoring data that is collected using the standard scientific methods coupled with statistical analysis must be a part of the process though. Data rich and design poor inventories must become a thing of the past. During the last 10 years we have had an over abundance of opinion and speculation inserted into the evaluation plans. There was a time when the employees were in fact trained in specific disciplines and were expected to perform scientific monitoring. We now have shoe boxes of data and a variety of people "interpreting" what the data means. It's not good work at all.

The first step in determining the use of an adaptive management strategy must be that of examining the statistical results of the inventory. This provides an objective view of what the data means and disallows personal bias or agendas. It also rids us of interpretation from employees who are not qualified to decide if grazing is heavy or light or logging strategies are proper or improper. Scientific process is key to selection of the proper management strategy. Talking to experts who have experience in examining field test results is also a very good idea.

There is no "one size fits all" strategy. And when one strategy is implemented, monitoring should be used to determine if the strategy achieves the objectives. Adaptive management allows adjusting practices over time to compensate for droughts, fires, floods, soils, geology, and geographic location. Oregon Cattlemen assess the existing research results on issues as they come forward and suggest that the agencies use the criteria provided in **Question A2** when conducting literature searches and reviews.

Above all, the tried and true practices used in local areas should be examined because they represent activities that work for the climate and economy. Doing good because it looks good and sounds good has been the norm for the last 10 years and from the looks of our forests and range it is becoming clear that the actions were unsound. It is more important to be scientifically accurate than it is to be politically correct.

D-2. How can environmental impact analyses be structured to consider adaptive management?

An EIS should consider a range of outcomes as opposed to choosing single or specific outcomes or fixed levels of outcomes. If and when the agencies use "science" rather than their interpretation of "science" they will observe that management practices available for grazing strategies, logging and mining activities are have been tested over time and are based on research results.

Environmental assessments must include natural variations in climate, rainfall, snow, geologic and geographic areas, and natural variations. An EIS should not assume that "natural" means no human has ever encountered the ground or used a resource. Science doesn't support this concept and adaptive management strategies have not been developed using such an absurd notion.

Adaptive management strategies are readily available to protect and conserve the resources and have been designed from research results intending to protect the resource. During the EIS scoping, employees should seek communication with local County commissions and citizens to gain knowledge about the practices known to be feasible and technically sound for local area. State extension programs for agriculture, forestry, and mining activities have worked for decades to keep the local areas informed about the newest research results. The agriculture organizations are an excellent resource to help find information about management strategies. The EIS merely needs to provide a section that examines the types of soils, geologic features, type of actions that are suitable for the site conditions, and examine the management practices available in the state for the activity.

D-3. What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

Initial NEPA analysis must address a range of responses, as opposed to a specific level of resource protection or sustainability as we often see in today's application of NEPA at the federal level. The current system forces NEPA review at any proposed change to a management plan or resource conservation plan.

D-4. What factors should be considered (e.g., cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

If the report writing and form filing and interagency oversight was minimized, the cost, time, and staff needs would be freed up to conduct on-site monitoring that had some meaning before and after planned activities. At the present time, EIS documents are unreliable and unbelievable. The decisions are based on "good guesses" and not field work. The staffs appear to be over burdened with meetings that end up being a lot of talk and very little action. Consultations with every level of an agency and other agencies has created a process where the local offices are not a part of the process but end up delivering the messages about a decision that is made at a Regional level or Washington DC level. We do not see good management decisions being made from the offices of public servants who don't work locally.

Anything and everything that gets in the way of a strong, reliable monitoring program at the agencies should be removed. Meetings by employees and staffs should be limited. We have not found the information, but encourage a review to ascertain how many hours of an employees paycheck is provided to them for sitting in a meeting all day or part of a day. The agencies should spend more time working in the field, examining data, and reading up on the science. These activities will be beneficial. If you don't have the field work information.....then you have nothing. No data is no data. Without data, all decisions are based on a guess and if the employee makes a guess after only having time to attend another meeting.....the guess isn't an informed one.

E. Categorical Exclusions

E-1. What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

In situations where grazing has occurred for a lengthy period of time, a categorical exclusion should be established for renewing a grazing permit. A grazing permit is usually part of an overall land

management plan and therefore many of the environmental impacts have already been assessed and no further action is required to renew the permit. The two predominant federal land management agencies, the BLM and USFS, must develop land management plans as dictated by the Federal Land Policy Management Act, 43 U.S.C. §1712, and the National Forest Management Act, 16 U.S.C. §§ 1600-1614. Each of these provisions call for multiple use and do not favor one use over another.

Information concerning grazing is a constant process. Farmers and ranchers constantly monitor range conditions and usually keep records of range conditions. Our answers in Section D illustrate the type of information necessary to establish a categorical exclusion. Other information that may be helpful in establishing categorical exclusions include is the length of the particular use. For instance, livestock grazing has been the predominant use of federal lands in the West. Some areas of the West have been grazed for over 200 years and, in some cases, by the same family who have ranched in the same area for generations. As long as the use remains the same, there is no change to the status quo, no change in the physical environment, and no extraordinary circumstances exist, the renewal of a grazing permit should qualify for a categorical exclusion.

We suggest also that noxious weed controls receive exemption when the herbicide use has received a label and is exmained for use on a region wide basis for weed management. Modern chemical and biological controls are more environmentally friendly than ever before. Each and every square foot of land doesn't need an entire document to address the impacts herbicide use will have when the issue has been covered from a chemical and scientific investigation required before general use. Streamlining redundant activities would help improve the NEPA process. Allowing noxious weeds to grow while an EIS is put together may be more harmful than a proper herbicide and application without an EIS.

E-2. What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?

One point of comparison for establishing a categorical exclusion can be found in USFS's own list of categorical exclusions as established by the Chief of the Forest Service. Forest Service Handbook 1909.15 § 31.1b. One categorical exclusion exists for the sale or exchange of land. Id. at § 31.1b(7). In this provision is the phrase " *where land uses remain essentially the same.*" Id. As mentioned before grazing has long been a use of federal lands where properly managed grazing will will result in little or no impact to the physical environment. The land will be basically the same before a permit renewal and after the permit is renewed. If the fundamental principle of "where land uses remain essentially the same" exists as the basis for a categorical exclusion, then the renewal of a permit should fall under a categorical exclusion. Courts grant a great deal of deference to an agency's interpretation of its own categorical exclusions, as long as that interpretation is not clearly erroneous or inconsistent with the agency's own regulations. City of Alexandria v. Federal Highway Admin., 756 F.2d 1014, 1020 (4th Cir. 1985). Therefore, since a site specific analyses has already been completed during the land use planning phase, sufficient data exists to establish a categorical exclusion "where land uses remain essentially the same."

F. Additional Areas for Consideration

The NEPA process is broke. There is a tremendous backlog in renewing grazing permits, weed control assessments, and resource uses. The public has become disenchanted with the process.

NEPA has become a land use statute and its intent was to assess real impacts rather provide a forum for arbitrary decisions that stop all activities. Courts have held that NEPA does not mandate any particular outcome (Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350) and with the inclusion of science, data collections, knowledgeable input rather than opinion and speculations

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(in hopes a special interest group will approve), then the NEPA process will become what the law intended.

A high weight should be placed on those who rely on the agency action for economic consideration and this can be achieved with the inclusion of local government and affected local citizens early in the process. A sincere and meaningful review of the public input would be an helpful also. Create categorical exclusions for actions such as renewing grazing permits where the land use is the same, has been the same and have little significant impact on the environment. Having to reassess what has been assessed in the past where changes have not occurred is redundant action.

We support CEQ's efforts to seek comments and look forward to regulatory changes that will return a meaningful process to NEPA.

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